

### 3. RESPONSE TO COMMENTS

Copies of the written comments that were submitted on the Draft EIR/EIS are provided in this section, as well as excerpts of the transcripts from the Public Hearings held on April 7, 2005 (complete transcripts are in the Appendix). Each numbered comment set is immediately followed by the corresponding responses. Comment letters are presented chronologically, in the order of the date of the comment, followed by the comments received during the Public Hearings. Errata and minor text clarifications within the Draft EIR/EIS arising from the comments and responses are presented in Section 4.

Individual comments are numbered in the margins of each comment letter and correspondingly numbered responses follow each letter. Table 3-1 lists all comments and shows the comment set identification number for each letter.

**Table 3-1. Commenters and Comment Set Numbers**

| <b>Agency/Affiliation</b>                                   | <b>Name of Commenter</b>                                 | <b>Date of Comment</b> | <b>Draft EIR/EIS Comment Set</b> |
|---|--|------------------------|----------------------------------|
| California Coastal Commission                               | Audrey McCombs, Analyst, Energy and Ocean Resources Unit | 4/06/2005              | 1                                |
| Monterey Bay Unified Air Pollution Control District         | Jean Getchell, Supervising Planner                       | 4/11/2005              | 2                                |
| U.S. Environmental Protection Agency                        | Lisa B. Hanf, Manager, Environmental Review Office       | 4/20/2005              | 3                                |
| Monterey County Planning and Building Inspection Department | Brett C. Becker, Associate Planner                       | 4/21/2005              | 4                                |
| Alliance of Communities for Sustainable Fisheries           | Kathy Fosmark  | 4/25/2005              | 5                                |
| NOAA National Marine Fisheries Service                      | Monica L. DeAngelis, Marine Mammal Biologist             | 4/25/2005              | 6                                |
| Moss Landing Harbor District                                | Linda G. McIntyre, Esq., General Manager/Harbormaster    | 4/26/2005              | 7                                |
| Moss Landing Fishermen's Association                        | Tom Hart   | 4/7/2005               | 8                                |

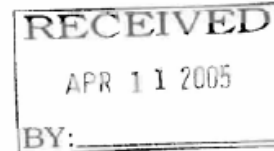
1 COMMENT SET 1: CALIFORNIA COASTAL COMMISSION

STATE OF CALIFORNIA--THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

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April 6, 2005

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Re: Draft EIR/EIS for MARS Cabled Observatory

Dear Ms. Brown and Ms. Hall:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report/Environmental Impact Statement for the Monterey Accelerated Research System Cabled Observatory.

The Coastal Commission has retained coastal permit jurisdiction over the portion of the project in State waters. In addition, since the project also requires a federal permit from the U.S. Army Corps of Engineers, it must be reviewed for its consistency with California's Coastal Management Program pursuant to Section 307(c)(3)(A) of the federal Coastal Zone Management Act. Our comments on the draft EIR/EIS address information the Coastal Commission will need to evaluate the project under the resource policies of Chapter 3 of the Coastal Act. Specific comments on the draft EIR/EIS follow below.

Section 1.4: Consistency with State, Regional and Local Plans

1. Section 1.4 should be expanded to include discretionary actions by federal agencies, such as the US Army Corps of Engineers, NOAA Fisheries, the US Coast Guard, and the US Fish and Wildlife Service. The section should include a discussion of federal policies such as the Clean Water Act, the federal Endangered Species Act, the Marine Mammal Protection Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the National Historic Preservation Act. A discussion of the Commission's authority under the Coastal Zone Management Act should also be included in this section.

1-1

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#### Section 1.4.6: Coastal Act

2. Section 30600 of the Coastal Act requires any person wishing to perform development in the coastal zone to obtain a coastal development permit (CDP). This project is subject to coastal development permit requirements. The Coastal Commission retains CDP jurisdiction over tidelands, submerged lands, public trust lands, and lands within 100 feet of any wetland, estuary, or stream. (PRC §30601(2)) Other areas of the project site located within the coastal zone are subject to the CDP authority of Monterey County, pursuant to the County's certified Local Coastal Program (LCP).

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The project therefore requires a CDP from the Coastal Commission for project activities located seaward of the mean high tide line and within 100 feet of a wetland, as well as a CDP from Monterey County for project activities located in the coastal zone landward of the mean high tide line. Because the project requires a permit from the US Army Corps of Engineers, a consistency certification must also be obtained from the Commission, pursuant to Section 307(c)(3)(A) of the federal Coastal Zone Management Act. Table 1-1 should be updated to reflect this information.

#### Section 2.4: Environmental Compliance Inspection and Mitigation Monitoring

3. The last bullet point on page 2-26 states: "A site-specific Spill Prevention Control and Countermeasure Plan will be developed and approved prior to and implemented during all cable laying and operation/maintenance activities." The plan should be developed prior to finalizing the EIR/EIS. The plan should address potential oil and/or fuel spills from all project activities, both onshore and offshore. The contents of the plan should inform the analysis of potential impacts to the marine environment from fuel spills (see, for example, Impact MBR-5 on page 4.5-26, Impact MBR-8 on page 4.5-28, Impact MAR-3 on page 4.6-12).

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#### Section 2.5.2: Repairs and Maintenance

4. Beginning with line 24 on page 2-29, the document discusses periodic inspections of the cable and repair strategies. Please provide details concerning how often the cable will be surveyed, how it will be surveyed, and what portions of the cable will be surveyed. In past offshore fiber optic cable projects, the Commission required that each cable be surveyed in full, to the edge of the continental shelf, to verify that buried segments of cable remain buried. To mitigate for potential impacts that would be caused if the cable becomes unburied, we suggest the final EIR/EIS require periodic surveys (described in detail) and reburial, if necessary, as part of the Mitigation Monitoring Plan.

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#### Section 4.2: Commercial and Recreational Fishing

5. The discussion of Impact CFR-1 on page 4.2-13 indicates that fishing vessels will be precluded from the area around the cable lay vessel during cable lay (and presumably removal) operations. Please describe how the applicant will notify mariners of the preclusion zone and schedule for cable lay and removal operations.

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6. The discussion of Impact CRF-2 on pp. 4.2-14 to 4.2-15 describes the possible impacts of cable operations on commercial fishing; specifically, 1) that equipment may get snagged on the cable, and 2) that the presence of the cable may discourage fishing in the area, effectively creating a "preclusion zone" that lasts the life of the cable. Section 30234.5 of the Coastal Act specifically recognizes the economic importance of fishing activities, and mandates its protection. To satisfy this Coastal Act policy, we recommend that the final EIR/EIS require the applicant to (1) bury the cable to the extent feasible to avoid interfering with commercial fishing that occurs in the project area, and (2) develop a protocol for compensating fishermen if fishing gear accidentally becomes entangled with and lost or damaged due to the presence of unburied cable.<sup>1</sup> The Final EIR/EIS should require these measures as part of its Mitigation Monitoring Plan.

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#### Section 4.3: Cultural Resources

7. Please explain why the cultural resources data in Appendix E is confidential. Is it necessary for **all** the information to remain confidential, or can some be released to the public for agency review?
8. Mitigation measure MM CR-1 discussed on page 4.3-8 suggests that the applicant should review existing data from the sub-bottom profile and avoid any potential archeological sites. Commission staff believes that the data should be reviewed as part of the environmental analysis, not afterwards, as the presence of archeologically sensitive areas along the cable route could significantly alter the impacts analysis. Please review the sub-bottom profile data prior to the release of the final EIR/EIS, and incorporate the data in that document's analysis.

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#### Section 4.4: Geology

9. The cable is being installed across at least two active fault zones, and in proximity to areas known to harbor high-velocity turbidity currents. Faulting, resultant sliding and slumping, liquefaction, and turbidity currents all have the capacity to damage the cable, and are not fully mitigated by the location chosen for the cable. However, since one purpose of the cable is to allow study of just these phenomena, it is not feasible to locate the cable to avoid these hazards.

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Disruption of the cable by surface rupture of the fault could be mitigated if the cable is laid on the surface in fault zones, in a Z-shaped pattern to provide slack that would be taken up during a major earthquake along the fault. Please include a discussion of this mitigation measure in the final EIR/EIS, and analyze whether the advantages of this

<sup>1</sup> In other offshore cable projects approved by the Coastal Commission, applicants negotiated with affected fishermen a "Fishing Agreement" that includes protocols for accepting and reviewing claims, compensating fishermen for gear loss or damage, and a path to mediation and/or arbitration if a dispute arises between a cable operator and a fisherman.